

# Buffalo Law Review

---

Volume 8 | Number 1

Article 58

---

10-1-1958

## Criminal Law—Testimony of Accomplice Not Corroborating Evidence for Conviction

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Criminal Procedure Commons](#)

---

### Recommended Citation

Buffalo Law Review, *Criminal Law—Testimony of Accomplice Not Corroborating Evidence for Conviction*, 8 Buff. L. Rev. 112 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/58>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

## Testimony of Accomplice Not Corroborating Evidence for Conspiracy Conviction

If a person is charged with sale of narcotics, the buyer's uncorroborated testimony is sufficient to sustain the conviction.<sup>37</sup> However, in *People v. Malizia*,<sup>38</sup> the defendant, according to the fourth count of his indictment, allegedly conspired with one Calvin Malone to commit the crimes of feloniously selling a narcotics drug, feloniously possessing a narcotic drug with intent to sell, and committing acts injurious to public health and morals. The fourth count of the indictment was sufficiently corroborated. One particular sale between defendant as seller and Malone as buyer made up the first count of the indictment, as well as being set out as a part of the conspiracy under the fourth count. The sale described in the fourth count was corroborated only by Malone who was, under the fourth count, the co-conspirator of the defendant. The defendant was convicted under the first and fourth counts of the indictment. The Appellate Division affirmed the conviction.<sup>39</sup>

The Court of Appeals held that Malone was an accomplice of the defendant as a matter of law under both counts. Therefore, Malone's uncorroborated testimony was not sufficient to sustain defendant's conviction under the first count.

Thus, the Court points out that the principle of the buyer's uncorroborated testimony being sufficient to convict is limited by the statutory provision that an accomplice's testimony alone is not sufficient to convict his "brother in crime."<sup>40</sup>

## Power of Grand Jury

In New York State the Grand Jury derives its power from the Constitution and the acts of the legislature.<sup>41</sup> It is sworn to inquire into crimes committed or triable in the county for which it is drawn,<sup>42</sup> and is duty bound to make such inquiries and present them to the court.<sup>43</sup> In the absence of a clear constitutional or legislative restriction, the New York courts have traditionally allowed the Grand Jury a wide discretion in the exercise of these powers.<sup>44</sup> The imposition of these duties and powers has a duality of purpose—one, in the interests of society to see that persons who are justly suspected of crime are held to answer; the other in the interest of the citizen, to insure him from unjust accusations which

37. *People v. Pasquarello*, 282 App.Div. 405, 123 N.Y.S.2d 98 (4th Dep't 1953), *aff'd*, 306 N.Y. 759, 118 N.E.2d 361 (1954).

38. 4 N.Y.2d 22, 171 N.Y.S.2d 844 (1958).

39. 4 A.D.2d 106, 163 N.Y.S.2d 255 (1st Dep't 1957).

40. N. Y. CODE CRIM. PROC. §399.

41. N. Y. CONST. ART. 1 §6; N. Y. CODE CRIM. PROC. §§223, 245, 252, 253.

42. N. Y. CODE CRIM. PROC. §223.

43. *Id.*, §245.

44. *People ex rel. Hirschberg v. Close*, 1 N.Y.2d 258, 152 N.Y.S.2d 1 (1956).